

THE SPIRIT OF DEMOCRACY  
Published every Saturday at the following rates:  
\$2.00 per annum, in advance.  
\$1.00 per annum, if paid within the year.  
\$0.50 per annum, if payment be delayed until the expiration of the year.  
TO SUBSCRIBERS.  
No paper will be discontinued, except at the option of the editor, until all arrears are paid.  
All communications sent by mail must be post-paid.

# SPIRIT OF DEMOCRACY.

Vol. V. WOODSFIELD, OHIO, SATURDAY, FEBRUARY 24, 1849. No. 50.

MECHANICAL EXECUTION  
BY E. ADOLPHUS RUTER  
TERMS OF ADVERTISING.  
Advertisements inserted at 50 cents per month (fourteen lines or less) for the first insertion, and 25 cents for each subsequent insertion. One dollar one month \$7.00. Three months \$15.00. Six months \$25.00. Twelve months \$45.00.  
JOB PRINTING  
Of every description neatly and expeditiously executed at the office of the "Spirit of Democracy" and at reasonable prices.

## The California Emigrant.

"Oh, Susanna!"  
I came from Salem city,  
With my wash-bowl on my knee,  
I'm going to California,  
The gold-dust for to see.  
It rained all night the day I left,  
The weather it was dry,  
The sun so hot I froze to death—  
Oh! brothers, don't you cry,  
Oh, California!  
That's the land for me!  
I'm going to Sacramento,  
With my wash-bowl on my knee!  
I jumped aboard the "Lark" ship,  
An' travelled on the sea,  
And every time I thought of home,  
I wished it wasn't me!  
The vessel heaved like any horse,  
That had of oats a wealth;  
It found it couldn't throw me, so  
I thought I'd throw myself!  
I thought of all the pleasant times  
We've had together here;  
I thought I'd cry a bit,  
But couldn't find a tear.  
The pilot bread was in my mouth,  
The gold-dust in my eye,  
And though I'm going far away,  
Dear brothers, don't you cry!  
I soon shall be in Francisco,  
And then I'll look all 'round,  
And when I see the gold lumps there,  
I'll pick them off the ground.  
I'll scrape the mountains clean, my boys,  
I'll drain the rivers dry,  
A "pocket full of rocks" bring home—  
So, brothers, don't you cry!

## Remarks of Mr. Pugh,

ON THE BILL TO REPEAL SO MUCH OF THE APPORTIONMENT BILL AS DIVIDES HAMILTON COUNTY.

(Continued.)

Mr. Pugh resumed his remarks as follows:

The notion that our fathers, in the original law which they have given us, designed to favor, or even contemplated, the election of Representatives by single districts, is a pure mistake—unwarranted by the terms of that law itself, as I have demonstrated, and unwarranted, also, by the opinions then generally entertained upon the subject. Counties, as such, have been recognized as the proper constituencies of Representatives from the earliest period in the history of that country from which we derive our freedom, our form of government, and our language. The true and ancient Constitution of England gave to every county two members in the House of Commons, and one Earl in the House of Peers. [1 Bla. Com., 116.] Every other species of representation, now known to British law, is an innovation upon that system. The monarchs frequently granted to cities the right of separate representation to induce foreign merchants to settle in those cities, or to foster commerce and trade. But these grants have always been evidenced by letters patent from the Crown—an express dispensation of the royal prerogative—and have no efficacy otherwise. For it is not to cities only that such rights have been granted, but to boroughs likewise—precincts less than counties in extent—and in reward of some special service, or by the monarch's personal favor. Many of these boroughs never had a population sufficient to entitle them to representatives, and they have now become saleable commodities and appendages of the great family estates. Through them, retired and opulent merchants, aspiring young statesmen, advocates who have won eminence and fortune at the bar, and the sons of the nobility have made their entrance (for all past time) into Parliament. But not to cities only, and boroughs, has the right of separate representation been vouchsafed by royal indulgence; it was freely granted to monasteries and colleges, just as Bishops were admitted among Peers. And even now the universities of Oxford and Cambridge return their members to the House of Commons with as much show of right as the great cities of London, and Bristol, and Liverpool, and by a right more ancient (two hundred years at least more ancient) than the cities of Manchester, and Leeds, and Birmingham.

As for the elections of citizens and burgesses, Sir William Blackstone tells us, "they are supposed to be the mercantile part, or trading interest of the kingdom." But as trade is of a fluctuating nature, and a town, long fixed in a place, it was formerly left to the Crown to summon, *pro et contra*, the most suitable persons to send representatives to parliament. So that as towns increased in trade, and grew populous, they were admitted to share in the legislature. But the misfortune is, that the deserted borough continued

to be summoned as well as those to which their trade and inhabitants were transferred, except a few which petitioned to be eased of the expense, then usual, of maintaining their members, four shillings a day being allowed for a knight of the shire, and two shillings for a citizen or burgess—which was the rate of wages established in the reign of Edward III. (4 Inst. 16.) Hence the members for boroughs now bear above a quadruple proportion to those for counties, and the number of parliament men is increased since Fortescue's time, in the reign of Henry the Sixth, from 300 to upwards of 500, exclusive of those for Scotland. The universities were in general not empowered to send burgesses to parliament though once, in 28 Edward I., when a parliament was summoned to consider the king's right to Scotland, there were issued writs which required the universities of Oxford to send up four or five, and that of Cambridge two or three, of their most discreet and learned lawyers for that purpose. But it was King James the first who indulged them with the permanent privilege to send constantly two of their own body to serve for those students who, though useful members of the community, were neither concerned in the landed nor the trading interest, and to protect, in the legislature, the rights of the republic of letters." [1 Bla. Com. 174.]

Whilst I have shown, however, that representation, other than by counties, is a departure from the feudal system and the English constitution, I have omitted to speak of the doctrine of electing by single districts. That is a doctrine of our own times peculiarly, not conceived more than about thirty years since, and never before put into practice till the establishment of the present New York constitution. County, borough, city, and university members, in the House of Commons have nearly always been elected by pairs, and are so rated at this hour. The other system (of electing representatives singly) may be a good one, but it is, most assuredly an untried one: for the experience of New York has yet produced no calculable result. Of the 489 members of parliament elected for England, before the reform act, 40 counties returned two knights each, 23 cities two citizens each, and one city (London) four citizens, 163 boroughs two burgesses each, and two boroughs (Weymouth and Melcombe Regis) four burgesses each, and eight Cinque Ports and boroughs two citizens each. [Jacob's Law Diet. Title, Parliament, VI B.] In the reformed Parliament, there are 253 members for counties, 399 for cities and boroughs, and 6 members for universities, including Scotch and Irish members. To the English representation alone," says Mr. Hovenden, "67 county members have been added, whilst 90 borough members have been struck off." [1 Bla. Com. 174. note.]

A revision of the various state constitutions, in force at the time ours was adopted, will put a quietus upon the assertion that the single district system was then considered desirable, and will show how it came that the system of county representation was adopted in Ohio.

The New England States were settled by a population principally emigrants from the cities, [for it was in the cities of England that the Puritan faction predominated,] whilst the Southern colonies were planted by county gentlemen, cavaliers, to whom the habits of trade and commerce were repulsive. We find, therefore, that New England, in very early times, subdivided her counties into towns, [precincts like our townships,] and erected them into corporations, with selectmen and other officers of considerable authority and importance. The South, however, prone to agricultural pursuits, and averse to density of population, retained the county divisions entire—entrusting their government, chiefly, to the Sheriffs and Magistrates composing the county courts, except in the case of cities or towns previously incorporated, and entitled, by the royal charters, to separate representation. It is not wonderful, therefore, that those diverse settled communities should have adapted diverse systems.

Thus, Massachusetts, by her constitution of 1780, provided that every corporate town containing one hundred and fifty taxable polls should elect two Representatives; every corporate town containing three hundred and seventy-five taxable polls, might elect two and a half; and every corporate town containing five hundred and twenty-five taxable polls, might elect three. In the same manner, New York, by her constitution of 1787, provided that every town containing one hundred and fifty taxable polls should elect two Representatives; every town containing three hundred and seventy-five taxable polls, might elect two and a half; and every town containing five hundred and twenty-five taxable polls, might elect three.

## Representative.

unless it contained one hundred and fifty taxable polls. Connecticut, New Hampshire, Vermont, and Maine adopted the same system—not, let it be observed, a system of single districts, or of "certain" representation, but of representation by corporate subdivisions of counties. The city of Boston, as a city, was not known in the apportionment.

Rhode Island, under its charter, had a peculiar plan [one cannot call it a system] of representation. Thus, the assistants were to meet twice a year, and with them, "such freemen of the said company, not exceeding six persons for Newport, four persons for each of the respective towns of Providence, Portsmouth and Warwick, and two persons from each other place, town or city, who shall be, from time to time, thereunto elected or deputed." &c.

Virginia, on the other hand, apportioned thirty-one of her delegates to the counties west of the Alleghany Mountains, twenty-five to the counties lying between the Alleghany and the Blue Ridge, forty-two to the counties east of Blue Ridge and above tide-water, and thirty-six to the counties, cities, towns and boroughs lying upon the tide-water, proceeding especially to name the number to which each should be entitled. The city of Richmond, the borough of Norfolk, and the town of Petersburg were each to have one delegate—the city of Williamsburgh to have one in common with the counties of James City and York. Thus, it will be perceived, the irregularities of the English system, as well as its general principles, were copied; but this was because of privileges conferred upon Richmond, Norfolk, Petersburg and Williamsburgh, before the Revolution. There was no division into single districts, however, in the Virginia apportionment.

North Carolina pursued the scheme of two members for every county, but added one member for each of six towns named.

South Carolina has no county organization, but her representative districts are permanently established—each of them [except All Saints district] electing more than one member.

Maryland adhered to the system of representation by counties—except that Annapolis was allowed four delegates, and Baltimore two.

Georgia apportioned one representative to each county containing three thousand persons, three to each county containing seven thousand persons, four to each county containing twelve thousand persons, but ordained that no county should have less than one representative, nor more than four representatives.

The Middle States were more regular than the Southern ones.

Pennsylvania, indeed, allowed the city of Philadelphia to be reckoned among the counties in the apportionment of representatives [using in other respects the language of our constitution] but so far from favoring single districts, expressly forbade the division of the city of Philadelphia, or of any county, even for SENATORIAL purposes.

New Jersey and Delaware adhered strictly to the system of representation by counties—three members of the Lower House being allowed to each county in the former, and seven in the latter, without the least regard to population.

New York also elected her representatives by counties, and forbade single districts, till the adoption of the new constitution.

Of the Western States admitted previous to our admission, Kentucky chose the system of county representation, and provided that when any town should have the requisite number for a representative, it might separately elect one—a provision, however, of which no town or city has ever yet availed itself.

Tennessee, like New Jersey and Delaware, adhered rigidly to the county system.

These were all the constitutions in force when our constitution was adopted. Many—nay, most of them, might say—had not been devised when the Ordinance of 1787 was promulgated, and that great Charter evidences most clearly, I think, the opinions then entertained upon this subject. Suffer me to quote a passage from it:

"As soon as there shall be five thousand free male inhabitants of full age, in the district, upon giving proof thereof to the Governor, they shall receive authority, with time and place, to elect representatives from their counties, or townships, to represent them in the General Assembly; provided, that for every five hundred free male inhabitants there shall be one representative, and so on progressively, with the number of free male inhabitants, shall the right of representation increase until the number of representatives amount to twenty-five, after which the number and proportion of representatives shall be regulated by the Legislature."

From this it would appear that the great men of the Continental Congress neither approved city and borough representation, nor representation by single districts. Of the effects and object of the former, they could not be ignorant. It had prevailed in the cases of Philadelphia, Baltimore, and Richmond (all cities incorporated under the proprietary and colonial government) where ever a larger part of the population was likely to be agricultural, and the residue commercial, in the southern states. It was a continuation of the borough system of representation in England, and they well enough knew that the very fact stated by Sir William Blackstone ("trade is of a fluctuating nature, and seldom long fixed in a place," under such a system, the utmost corruption and rottenness. They allowed the people of the North West Territory, therefore, a choice between the township system of representation, then and now prevalent in New England, and the county system.

Representation by single districts never occurred to them, however, or was not considered advisable. The old constitution of Louisiana, adopted twelve years after ours had been adopted was the first to recognize that system of representation in the least degree. That provided (section fourth and second article) for residence, as a qualification of the candidate, one year in the county of which he may be chosen, or in the district for which he is elected in case the said counties may be divided into separate districts of election; thus leaving the matter to future legislation. But the reason of this undoubtedly was the diverse characters of the two races—French and Saxons—which settled the state. Be that as it may, the matter remained in *imbibis*—for separate representative districts were never actually created.

To the convention which assembled to frame a constitution for Ohio, two modes only presented (as the Ordinance of 1787 was in full force) namely: Representation by entire townships, and representation by entire counties. The latter was chosen, and into the third section and first article of the constitution was thus specifically incorporated.

"The Representatives shall be chosen annually, by the citizens of each county respectively, on the second Tuesday in October."

We have already seen that one of the very purposes for which county organizations were originally adopted, was the formation of electoral districts. The representative was as clearly an officer of the county as well as the Sheriff himself. Let me read a few passages from Lord Coke's commentary upon Littleton:

"It appears by the laws of Edward the Confessor, that this realm was divided into shires and counties, and those shires into cities, boroughs, and towns by the Britons; so that King Alfred's division of shires and counties was but a renovation, or more exact description of the same."—Co. Litt. 168, a.

"A county is fetched from the French and shire from the Saxon. For *pagus* in the Saxon tongue, signifieth *partire*, because every county or shire is divided and parted by certain metes and bounds from another, and in Latin is called *comitatus* a *comitatus*, for *comitatus* signifieth together. And forasmuch as the men of one county do not accompany together with men of another county at county courts, towns, leets, and other courts, therefore, in judgment of law, they shall take no notice of a livery in one county to pass away lands in their own county. But of this more shall be said hereafter."—Co. Litt. 50, a.

Here let me interpose a passage from Blackstone (2 Comm. 315), germane, as I think, to the last paragraph: "If the conveyance, or feoffment be of divers lands, lying scattered in one and the same county, then in the lord's possession, livery of seisin of any parcel, in the name of the rest, sufficeth for all; but if they be in several counties, there must be as many liveries as there are counties. For if the title to these lands come to be disputed, there must be as many trials as there are counties, and the jury of one county are no judges of the notoriety of a fact in another."

Let us return to Sir Edward Coke: "Counties or shires, the one is taken from the French, the other from the Saxon, in Latin *comitatus*. Counties are certain circuits or parts of the kingdom, into the which the whole realm

was divided for the better government thereof, so as there is no land, but it is within some county. And every of them is governed by a yearly officer, which we call a Shireve (SHERRIFF), which name is compounded of these two Saxon words, *shire* and *reva*, i. e. *praepositus*, or *praefectus*, *comitatus*. [First or chief man of the county.] But hereof, more hereafter, in its proper place, shall be spoken. There be in England forty-one counties, and in Wales twelve."—Co. Litt. 109, a.

[The present number of counties in England is forty, and in Wales twelve, making together fifty-two.—Mr. Thomas's Note.]

Blackstone writes to the same effect: "Shire is a Saxon word, signifying a division; but a county, *comitatus*, is plainly derived from *comes*, the Count of the Franks; that is, the Earl or Alderman (as the Saxons called him) of the shire, to whom the government of it was entrusted. This he usually exercised by his deputy, still called in Latin, *vice-comes*, and in English, the SHERRIFF, Shireve, or Shire-reeve, signifying the officer of the shire, upon whom, by process of time, the civil administration of it is now totally devolved."—Black. Com. 115.

From all these passages, it will perfectly appear that counties were political divisions of the state, well defined as such, having courts, sheriff, and in old times, an Earl or Alderman. They partook somewhat of a sovereign character, for, under the ancient law, in all peculiar jurisdictions, offences were said to be done against his peace in whose court they were tried, in a court *leat*, *contra pacem domini*; in the court of a corporation, *contra pacem ballivorum*; in the sheriff's court or town, *contra pacem vice-comitis*. (1 Black. Com. 117) against the peace of the sheriff. All the business of the county was done in the county courts, and under direction of the sheriff, the election of Representatives as well as the trial of cases, and the conveyance of lands. And to this day, in England, the Representatives of counties are chosen by the electors assembled in county court. I quote from my old and approved horn-book again:

"But elections of knights of the shire, must be proceeded to by the sheriffs themselves, in person, at the next county court that shall happen after the delivery of the writ."—(1 Black. Com. 178.) And our sheriff's proclamations, to this moment, call upon the electors to meet, and choose Representatives—showing plainly the original practice.

It is beyond question, therefore, that sheriffs, jurors, and county courts, in the absence of express legislation, have extensive electoral districts and jurisdiction. I do not mean to say that it cannot be otherwise; but I do say that such has been the immemorial understanding, and such certainly was (at the date of our constitution) the universal understanding, it is not only true, but it is idle to pretend that our fathers contemplated the division of counties for the purpose of representation. Hence, in every constitution which followed the Saxon system, whenever representatives are allowed to less than a county, it is plainly expressed—as, for instance, to the cities of Philadelphia, Baltimore and Richmond.—There were no cities in Ohio when our constitution was adopted; and, there being no necessity for municipal or borough representation, no provision was ever made for it. On the contrary, a new county was to remain attached to its parent till it could separately have a representative as well as a sheriff, a court and jurors.

And, furthermore, in every case where representatives have been apportioned to less than a county, (in this country and in England,) they were representatives of a city or borough corporate having a sheriff, or bailiffs, and a court. Let me recur to Sir William Blackstone, and for the last time:

"There are also counties corporate, which are certain cities and towns, some with more, some with less territory annexed to them; to which, out of special grace and favor, the Kings of England have granted the privilege to be counties of themselves, and not to be comprised in any other county; but to be governed by their own sheriffs, and other magistrates, so that no officer of the county at large have any power to interfere therein. Such are London, York, Bristol, Norwich, Coventry, and many others."—1 Black. Com. 120.

And London, Bristol, and many others, are the cities which sent Representatives to the House of Commons. New York city is a county also; Philadelphia has her high sheriff, and so have Baltimore, Richmond, Annapolis, and the other cities which are separately

represented. Each English borough, as well as each city, has its returning officer apart from the county at large, and to whom the sheriff issues his precept.—1 Black. Com. 177.

How does the case stand in regard to the two districts of Hamilton county? Have they separate sheriffs? Have they separate returning officers? They have not, and they cannot have under the present constitution.

On the tenth day of October last, the qualified electors of Hamilton county were notified, by the proclamation of the sheriff, to meet at the usual places of holding elections, in the several townships, precincts, and wards, and choose five representatives to the General Assembly. The bill of 18th February last afforded him (the sheriff) no instruction as to his duty, and did not assume to repeal former legislation upon that subject. By the act of 1831, which is still in force, he is directed "fifteen days at least, before the holding of any general election, or ten days before the holding of any special election, to give public notice by proclamation, throughout his county, of the time of holding such election, and the number of officers at that time to be chosen, one copy of which shall be set up at each of the places where elections are appointed to be held." &c.—Sutton's Stat. 306.

Now the number of Representatives at that time to be chosen by the electors of Hamilton county (whether chosen in separate districts, or at large) was five, not two, nor three. And the law makes no provision for separate proclamations to the districts, nor for a proclamation partly addressed to one district of the county, and partly to another. It must be a proclamation throughout the county—to the whole county—of the number of officers at that time to be chosen; (not of the number at any place, or in any particular district, to be chosen); and a copy of it must be set up in every precinct of the county where votes are received—not one kind of proclamation in Cincinnati township, and another kind of proclamation (not a copy of the first) in Miami township—far less two proclamations, neither a copy of the other, in the first and ninth wards of the city of Cincinnati. And yet, Mr. Speaker, why notify the citizens of the second district what the citizens of the first district must do, and vice versa, unless it be that the constitution presses the supporters of the bill of February last to the very extreme of the absurd and impossible.

I took occasion to show, in my reply to Judge Spencer on the 2d ultimo, the confusion which would inevitable result from an obedience of that bill by the Clerk of the Court, the returning officer in common of the two districts, and the legal impossibility of the Clerk obeying it, without a palpable usurpation of judicial power and a violation of his oath. I will not repeat that argument now; it has not been answered, (although Judge Spencer threatened a rejoinder) and it is, in my humble judgment, unanswerable.

But why need I speak of this division of Hamilton county as comparable to any other system of representation. It has no feature of the county, township or municipal system; for this zigzag line cuts in twain the township of Cincinnati, and the city of Cincinnati, as well as the county of Hamilton; commencing where the corporation and township line intersects Mill creek; thence eastward to the Miami Canal; thence southward along the canal to the elbow, [as it is called,] and turning a right angle, eastwardly, along the canal to Main street; thence southwardly along the centre line and turning another right angle, along the centre of Sixth, bending to the northward at the extremity of that street, turning again a right angle and running up Lock street one square; thence to and fro, among obscure lanes and alleys, till it strikes the old bed of Deer creek; thence meandering along that ravine northwardly and eastwardly to the corporation and township line again, and with that line eastwardly to the river-making of the first district, a figure unknown almost to geometry, and designed hereafter, I trust, to be unknown even to politicians and tricksters.

The system is not one of single districts; for two representatives are to be elected in one portion thus divided, and three in the other, because it was well known that to create single districts, out of this misshapen territory, would be to have democratic representatives—unless, indeed, the First and Second Wards would be erected into one district, and the whigs be allowed, as the boy said of his bed-fellow, to take one half out of the middle, and leave the other half to be made up from the remnants on both sides.